

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 011 of 2018

STATE

v.

AB

Counsel: Ms. L. Bogitini for State
Ms. S. Prakash for Accused

Date of Hearing: 04th June 2018

Date of Summing Up: 06th June 2018

Date of Judgment: 06th June 2018

Date of Sentence: 07th June 2018

SENTENCE

1. The names of the complainant and the accused are suppressed.
2. You are found guilty and convicted by this court, for one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act, which carries a maximum sentence of life imprisonment.
3. It was proved at the conclusion of the hearing that you had entered into the room when the Complainant was sleeping on the 31st of December 2017. You then had forcefully pulled down the Complainant to the floor and covered his mouth with your hands. You then rubbed petroleum jelly on your penis and removed the clothes of the Complainant. Afterward, you penetrated into the anus of the Complainant with your penis. After committing this crime on the Complainant, you have threatened him that you will kill him if he tells about this incident to anyone else.
4. Rape is the worst form of sexual abuse. Specially, it becomes more serious when it is involved with a young juvenile. The Complainant was fifteen years old at the time this

offence took place. You are known to the Complainant as his uncle. This form of sexual exploitation of children by a known adult within the environment familiar to them, is a serious offence. Therefore, I find this offending is a very serious crime.

5. Having taken into consideration the serious nature of this offence, it is my opinion that such offenders must be dealt with severe and harsh punishment. Hence, the purpose of this sentence is founded on the principle of deterrence and protection of community. Moreover, the Court must demonstrate in sentencing that the offenders of this nature are socially abhorrent.

Tariff

6. Hon. Chief Justice Gates in Anand Abhav Raj v State [2014] FJSC 12; CAV0003.2014 (20 August 2014) held that the tariff for rape of a child is between 10 - 16 years' imprisonment period.
7. The Complainant was fifteen years at the time of this offence was committed. According to the victim impact report of the Complainant, this incident has adversely affected to his education and also his relationship with his relatives. Accordingly, I find the level of harm is substantially high in this crime.
8. You have executed this crime on the Complainant when he came to the room to sleep. The room is located towards the back of the house. The rest of the family were drinking grog at the porch of the house. The cousin of the Complainant was in the room. However, he was fast in asleep. You then forcefully pulled the Complainant to the floor from the bed. You have squeezed the mouth of the Complainant, preventing him to shout for help. You then inserted your penis into his anus. Having committed this disgraceful crime on the Complainant, you have then threatened the Complainant that you will kill him, if he tells anyone about this incident.
9. Accordingly, I find that you have executed this crime when the Complainant was in a vulnerable situation, where he has no prospect of escaping or seeking help from outside. You have used substantial amount of force both physically and psychologically on the Complainant in order to execute and also to conceal this crime. I accordingly find the degree of culpability in this offending is substantially high.

10. In view of the seriousness of this crime, and the level of harm and culpability, I select twelve (12) years as the starting point.
11. You have blatantly breached the trust reposed in you by the Complainant. The Complainant in his evidence said that he did not expect that you would do such a thing. The age difference between you and the Complainant was nine years at the time of this crime took place. By committing this crime, you have denied the Complainant to have a normal and natural growth through his young adulthood. I consider these factors as aggravating circumstances of this crime.
12. You are a first offender. Therefore, you are entitled for a substantive discount for your good behaviour, pursuant to Section 4 (2) of the Sentencing and Penalties Act.
13. The learned Counsel for the defence submitted in your mitigation about your personal and family circumstances. However, such family and personal mitigations have very minimal mitigatory value.
14. In view of the above discussed aggravating circumstances, I increased three (3) years to reach interim imprisonment of fifteen (15) years. I reduce two (2) years for your previous good character and personal circumstances. Your final sentence has now reached to thirteen (13) years of imprisonment.
15. Having considered the seriousness of this crime, the purpose of this sentence, your age, family circumstances and opportunities for rehabilitation, I find eleven (11) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of eleven (11) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Head Sentence

16. Accordingly, I sentence you for a **period of thirteen (13) years imprisonment** for the offence of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act. Further, I

order that you are not eligible for any parole for a period of **eleven (11) years** pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of The Sentence

17. You have been in remand in custody for this case for a period of one (1) month and fourteen (14) days as you were not granted bail by the court. In pursuant of Section 24 of the Sentencing and Penalties Act, I consider the period of **two (2) months** as a period of imprisonment that have already been served by you.
18. Accordingly, the actual sentencing period is **twelve (12) years and ten (10) months** imprisonment with non-parole period of **ten (10) years and ten (10) months**.
19. Since this incident involves with domestic violence, I am satisfied that there are sufficient grounds to consider making an order under the Domestic Violence Act. I accordingly make a permanent Domestic Violence Restraining Order against you with standard non-molestation conditions and no contact conditions pursuant to section 24 and 28 of the Domestic Violence Act. The above Domestic Violence Restraining Order will be in force until this court or any other competence court is varied or suspended it. Furthermore, if you breached this restraining order, you will be charged and prosecuted for an offence pursuant of section 77 of the Domestic Violence Act.
20. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.V. Rajasinghe
Judge

At Suva
07th June 2018

Solicitors
Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for the Accused.